

for the

Eastern District of New York

Plaintiff(s)

V.

CITY OF NEW YORK and NEW YORK CITY
POLICE OFFICER RICKY ALEXANDER,
shield # 12750

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* COMPTROLLER, CITY OF NEW YORK
100 Church Street
New York, NY 10007

POLICE OFFICER RICKY ALEXANDER
121 Precinct
970 Richmond Avenue
Staten Island, NY 10314

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Philip O. Ohene, Esq.

Philip O. Ohene, Esq.
805 Castleton Avenue
Staten Island, NY 10310

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

JS 44 (Rev. 1/2013)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
BARRY SEPULVEDA(b) County of Residence of First Listed Plaintiff Richmond
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)
Philip O. Ohene, Esq. 805 Castleton Avenue, Staten Island
New York 10310**DEFENDANTS**CITY OF NEW YORK and NEW YORK CITY POLICE OFFICER
RICKY ALEXANDER, shield # 12750County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Corporation Counsel of City of New York
100 Church Street
New York, NY 10007**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 usc Section 1985 et alBrief description of cause:
Unlawful Search and Seizures**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

9-8-15

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Philip O. Ohene, Esq., counsel for Barry Sepulveda, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☒ monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- ☐ the complaint seeks injunctive relief,
- ☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: Philip O. Ohene

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
BARRY SEPULVEDA

Plaintiff,

VERIFIED COMPLAINT

-against-

CITY OF NEW YORK and NEW YORK CITY POLICE
OFFICER RICKY ALEXANDER, Shield # 12750

Defendants,

-----X

PRELIMINARY STATEMENT

1. This is an action for monetary damages (compensatory and punitive) against the City of New York and Police Officer Ricky Alexander, shield # 12750, arising out of the arrest, imprisonment, unlawful search and the violation of the privacy and constitutional rights of BARRY SEPULVEDA, the complainant herein.

2. On March 26, 2014, at approximately 2125 hours, Police Officer Ricky Alexander, acting under the color of State law, intentionally and willfully subjected the Plaintiff to, inter alia, a warrantless unlawful search by taking him to a hospital and forcing him to defecate so that his stool could be searched for drugs when there was no reasonable suspicion that contraband would be found in violation of Plaintiff's Fourth Amendment Constitutional rights.

JURISDICTION

3. This action is brought pursuant to 28 U.S.C. Sections 1331, 42 U.S.C. Sections 1983 and

1985, and the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States. Pendant jurisdiction, pendant party jurisdiction and supplementary jurisdiction over Plaintiff's state law claims is asserted.

4. The amount in controversy exceeds \$75,000.00 excluding interest and cost.

5. Venue is laid within the United States District Court for the Eastern District of New York in that the Defendant City of New York and the Police Department of the City of New York is located within the Eastern District of New York and a substantial part of the events giving rise to the claim occurred within the boundaries of the Eastern District of New York.

PARTIES

6. That at all times mentioned herein, the Plaintiff BARRY SEPULVEDA, was and still is a resident of the County of Richmond, City and State of New York.

7. That at all times hereinafter mentioned, the Defendant CITY OF NEW YORK, was and still is a municipal corporation duly organized and existing pursuant to the Constitution and Laws of the State of New York.

8. That at all times hereinafter mentioned, the Defendant, City of New York, was and still is a municipal corporation doing business in the State of New York.

9. That at all times hereinafter mentioned, the individual Defendant, Police Officer Ricky Alexander was at all times relevant hereto, an employee of the City of New York as police officers.

10. At all times mentioned herein, defendants were acting under the color of state law, to wit. Under color of the statutes, ordinances, regulations, policies, custom and usages of the City and State of New York.

AS AND FOR A FIRST CAUSE OF ACTION

11. On March 26, 2014, the Plaintiff was a front seat passenger of a vehicle operated by a friend when the police stopped the vehicle because it was claimed that the operator made a turn without signaling.

12. The Police then forcibly pulled both the operator and the Plaintiff out of the vehicle and proceeded to search the vehicle. A small gravity knife was found in the center console of the vehicle and both the Plaintiff and the driver of the vehicle were arrested for Criminal Possession of a Weapon in the Fourth Degree

13. They were then taken to the 121st precinct where Plaintiff was forced to undress and strip searched by police officers without any clear indication that criminal evidence would be found within the body of Plaintiff.

14. Not being satisfied with the strip search, Police Officer Ricky Alexander and other police officers determined that Plaintiff should be taken to the Richmond University Medical Center for further search and as a result, Plaintiff was held for five (5) days at the hospital in order for Plaintiff to defecate so that his excretion would be searched, all against Plaintiff's will.

15. At the hospital, Plaintiff was forced to ingest laxatives in order to prompt excretion and that when no foreign bodies was found in his excretion, a pelvic x-ray was ordered to check for the presence of foreign bodies.

16. That when no foreign bodies or contraband was found in Plaintiff's excretion, he was then taken to Criminal Court and arraigned on charges of Criminal Possession of a Weapon in

the Fourth Degree. That charge was subsequently dismissed on 0000000.

17. That on or about March 26, 2014, the defendants, their agents and employees wrongfully and falsely accused the Plaintiff BARRY SEPULVEDA of the crimes of Criminal Possession of a Controlled Substance in that it was alleged that he had shoved bags of cocaine into his rectum and subjected him to a warrantless body cavity search.

18. That the said unlawful search was caused by the Defendants, their agents, servants and employees without a warrant, or other legal process, without probable cause and without authority of the law and without reasonable cause or belief that the Plaintiff BARRY SEPULVEDA was indeed guilty of the aforesaid crimes.

19. That the warrantless body cavity search made incident to his arrest for possession of a gravity knife conducted at the police precinct and hospital in violation of his constitutional rights.

20. That the Defendants, their agents, and employees acting within the scope of their authority and within the scope of their employment, wrongfully, unlawfully and without a sufficient charge having been made against him, detained the Plaintiff BARRY SEPULVEDA at the Richmond University Medical Center and directed that he be searched.

21. That the Defendants, their agents and employees had the opportunity to know or should have known that the Plaintiff BARRY SEPULVEDA was wholly innocent of the aforesaid suspicion and did not contribute in any way to the conducts of Defendants, their agents and employees and was forced by the Defendants to submit to the aforesaid warrantless search.

22. That both the visual body cavity search of the Plaintiff's anus at the precinct and the subsequent medical search at the hospital was unreasonable in violation of Federal Constitution.

23. That by reason of the unlawful warrantless search of the Plaintiff, Plaintiff was

subjected to great indignities, humiliation and ridicule in being so detained and searched, and was greatly injured in his character, and was caused to suffer much pain both in mind and body.

24. That the interest in human dignity and privacy which the Fourth Amendment protects forbids any such intrusion on the mere chance that desired evidence might be obtained.

25. That on or after March 26, 2014, the Defendants, their agents and employees maliciously and unlawfully searched the Plaintiff BARRY SEPULVEDA without any just grounds therefore.

26. That Plaintiff was and is wholly innocent and was forced by the Defendants, their agents and employees to submit to said search without any lawful grounds.

27. Defendants have deprived the Plaintiff of his civil, constitutional and statutory rights and are liable to the Plaintiff for personal injuries and related consequential damages in an amount to be determined.

WHEREFORE, Plaintiff demands judgment against the defendants, jointly and severally, as follows:

A. In favor of Plaintiff in the amount of Three Hundred Thousand (\$300,000.00) Dollars on Plaintiff's Cause of Action;

B. Awarding Plaintiff punitive damages in the amount of Three Hundred Thousand (\$300,000.00) Dollars on Plaintiff's Cause of Action;


C. Awarding Plaintiff reasonable attorney's fees, cost and disbursements of this action; and

D. Granting such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: Staten Island, New York
September 8, 2015



PHILIP O. OFFENE, Esq.
Attorney for Plaintiff
805 Castleton Avenue
Staten Island, NY 10310
(718) 727-6607

STATE OF NEW YORK, COUNTY OF

SS.:

I, the undersigned, an attorney admitted to practice in the courts of New York State,

Certification
By Attorney

certify that the within

has been compared by me with the original and found to be a true and complete copy.

Attorney's
Affirmation

state that I am

the attorney(s) of record for

action; I have read the foregoing

in the within
and know the contents thereof;
the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters
I believe it to be true. The reason this verification is made by me and not by

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

SS.:

I, **BARRY SEPULVEDA**being duly sworn, depose and say: I am **Complainant**Individual
Verification

in the within action; I have read the foregoing

Verified Complaint

and know the contents thereof; the same is true to my own knowledge, except

as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Corporate
Verification

the

of

a

corporation and a party in the within action; I have read the foregoing

and know the contents thereof; and the same is true to my own knowledge,

except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This

verification is made by me because the above party is a corporation and I am an officer thereof.

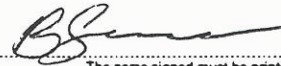
The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Records in my attorney's file

Sworn to before me on

9-8-15

Philip Chene
Philip Chene
Notary Public State of New York
NO 020H5025382
Qualified in Richmond County
Commission Expires March 28, 2018



The name signed must be printed beneath

BARRY SEPULVEDA

STATE OF NEW YORK, COUNTY OF

SS.:

(If more than one box is checked — indicate after names type of service used.)

I,
of age and reside at

being sworn, say: I am not a party to the action, am over 18 years

On

19

I served the within

Service
By Mail

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and
custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known
address set forth after each name:

Personal
Service on
Individual

by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served
to be the person mentioned and described in said papers as a party therein:

Service By
Electronic
Means

by transmitting the papers by electronic means to the telephone number listed below, which number was designated by the
attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was
received. I also deposited a true copy of the papers, enclosed in a post-paid wrapper, in an official depository under the
exclusive care and custody of the U.S. Postal Service, addressed to the attorney at the address set forth after the name:

Overnight
Delivery
Service

by depositing a true copy thereof, enclosed in a wrapper addressed as shown below, into the custody of

for overnight delivery, prior to the latest time designated by that service for overnight delivery.

Index No.

Year 19

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BARRY SEPULVEDA

Plaintiff

-against-

CITY OF NEW YORK and NEW YORK CITY
POLICE OFFICER RICKY ALEXANDER,
shield # 12750

Defendants

VERIFIED COMPLAINT

PHILIP O. OHENE

Attorneys for

Office and Post Office Address, Telephone

805 Castleton Avenue

Staten Island, New York 10310

Tel. (718) 727-6607

Fax (718) 727-0539

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Please take notice

☐ NOTICE OF ENTRY

that the within is a (*certified*) true copy of a
duly entered in the office of the clerk of the within named court on

19